

**State of Maine**  
**Department of Human Services**  
**Bureau of Medical Services**

for

**MEDICAL ELIGIBILITY DETERMINATION**  
**for the Katie Beckett Benefit**



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## **DEFINITION OF TERMS**

### **ACES**

A vital component used to collect and manage client data will be the Automated Client Eligibility System (ACES). This is the Departments new Client Eligibility System. ACES will provide the ability to meet Federal reporting requirements an allow management and supervisory staff, as well as direct service staff, to respond more effectively to the needs of Bureau clients. The current design of ACES does not include all of the eligibility information required to process a claim.

### **Assessment**

The process by which a beneficiary's medical condition is appraised or evaluated.

### **Claim**

A bill rendered by a provider to the Department of Human Services for a procedure, drugs, medical supplies and equipment, or services rendered for a given diagnosis or a set of related diagnoses.

### **CMS**

Centers for Medicare and Medicaid Services formerly the Health Care Financing Administration (HCFA)

### **Current Claim**

An unadjudicated (in-stream) claim that is currently being subjected to a system edit or audit.

### **Data Element**

A specific unit of information having a unique meaning.

### **Katie Beckett**

Katie Beckett is a MaineCare benefit for children who are up to 18 years old and meet specific medical requirements.

### **HIPAA**

Health Insurance Portability and Accountability Act of 1996 (HIPAA). The law included provisions designed to save money for health care businesses by encouraging electronic transactions, but it also required new safeguards to protect the security and confidentiality of that information.

### **MaineCare**

Formerly Medicaid

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**MMAM**

Maine Medical Assistance Manual

**MED version 3.0 (7/1/01)**

Medical Eligibility Determination form. This is the required form to be completed for the Katie Beckett assessment.

**Provider**

A person, organization, or institution certified to provide health or medical care services authorized under the MaineCare Program. For purposes this RFP means the successful bidder.

**Registered Nurse Assessor**

A Nurse Licensed in Maine as Registered, who performs a medical eligibility determination assessment using the MED 3.0.

**WELFRE**

A mainframe-based, batch processing system containing the eligibility subsystem for welfare programs and the subsystem for the processing of MaineCare medical claims. WELFRE provides the beneficiary eligibility.

**Quality Assurance (QA)**

A planned program of review of MED assessments designed to detect errors, omissions and/or inconsistencies. The goal of the program is to maintain standards in the assessment. The program includes evaluation of the errors and providing corrective measures and training.

## **SECTION 1: ADMINISTRATIVE INFORMATION**

This section presents general information on the objectives of this Request for Proposal, State agencies involved in this procurement, and the Request for Proposal organization.

The State of Maine Department of Human Services (hereinafter referred to as DHS), Bureau of Medical Services (hereinafter referred to as BMS), is issuing this Request for Proposal (hereinafter referred to as RFP) to solicit bids from qualified Nursing Assessment organizations/vendors to conduct approximately thirteen hundred (1300+/-) annual screening assessments for medical eligibility under Katie Beckett (hereinafter referred to as KB) Eligibility Criteria. The “Registered Nurse assessor” shall use the DHS assessment form, known as the Medical Eligibility Determination (MED) Form 3.0 (see Appendix B) and established MaineCare policy (see Appendix D-F), to determine an applicant’s medical eligibility. The contract will be for a term of (1) year commencing on July 1, 2002. At the Department’s sole discretion, the contract may be extended for four (4) one year renewal periods.

The Division of Purchases, within the Department of Administrative and Financial Services, will accept and record the timely submission of proposals submitted in response to this RFP, reject those proposals not submitted in accordance with this RFP, and oversee the procurement process.

### **1.1 OBJECTIVE**

The Department’s primary objective in undertaking this project is to have high quality medical eligibility assessments completed thoroughly, accurately and timely.

DHS is committed to selecting a bidder and conducting this procurement in an open and competitive manner in full compliance with State and Federal regulations and policies. Proposals will be evaluated and scored by an impartial panel of DHS staff.

The successful bidder will be awarded a firm, fixed-price per unit of service contract for work performed based on this RFP.

The work to be performed is divided into the following two major phases:

- Readiness Review and
- Operations.

Each the phase and the associated tasks are described in detail in Section 3 of this RFP.

## 1.2 ACQUIRING OFFICE AND CONTACT PERSON

This project is the responsibility of DHS. The contact person is the Katie Beckett Contract Administrator, Carole Kus, as identified in subsection 1.5.3.

## 1.3 OVERVIEW OF DHS ORGANIZATION

Maine DHS is responsible for a broad range of human service programs and is organized into two Deputy Commissioner level offices and six bureaus, one service center and 16 regional and district offices.

Within the DHS is the Bureau of Medical Services (BMS). The BMS organization chart is illustrated in Exhibit 1. The BMS is responsible for processing medical claims for payment, enrolling MaineCare (formerly Medicaid) providers, and overseeing their operations. The Bureau administers DHS's major health care financing programs, including MaineCare Services including long-term care facilities, and the licensure and certification of hospitals, nursing homes, and a variety of other agencies providing health services.

Representatives from the Bureau of Medical Services and the Division of Purchases will be involved throughout the procurement process.

## 1.4 RFP ORGANIZATION

This RFP is organized into five sections. The sections include the following:

**Section 1 – Administrative Information** provides bidders with general information on the objectives of this RFP, State organizations involved in the procurement, RFP organization, procedures, and proposal submission.

**Section 2 – General Requirements** provides general information on the Katie Beckett eligibility and the requirements that the proposed system must meet.

**Section 3 – Scope of Work** describes the bidder's scope of work, presents a description of the tasks to be performed, delineates State and contractor responsibilities, and defines milestones and deliverables.



**Section 4 – Proposal Preparation Instructions** defines the information that must be included in technical proposals, such as bidder identification, qualification and organization, and project understanding and approach. It also describes the format and content of cost proposals. Cost schedules are provided in Exhibit #4.

**Section 5 – Evaluation Approach** presents general information on the methodology DHS will use to evaluate and score proposals.

The following appendices will supplement information presented in the RFP:

Appendix A

- ❖ Sample Contract

Appendix B

- ❖ Medical Eligibility Determination form

Appendix C

- ❖ MMAM – Nursing Facility Services Policy – Section 67.05-3D & 67.02-3

Appendix D

- ❖ MMAM – Hospital Services Policy – Section 45.04-8

Appendix E

- ❖ MMAM – Psychiatric Facility Services Policy – Section 46.03-3

Appendix F

- ❖ Administrative Hearings Regulation

Appendix G

- ❖ Instructions for Completing the MED Form

## **1.5 PROCUREMENT PROCEDURES**

Prospective bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this RFP and respond to each requirement in their proposals in the format prescribed.

DHS will award a fixed price per unit of service contract as a result of this procurement. Among other provisions this agreement will contain clauses required by federal or State law or regulation and incorporate the RFP and winning proposal by reference. The successful bidder must agree to all terms and conditions contained in the Sample Contract Agreement in Appendix A.

DHS reserves the right to make a contract award without any further discussion with potential bidders regarding the proposals received. Therefore, proposals should be submitted initially on the most favorable terms available to DHS from a price and technical standpoint. DHS, however, reserves the right to conduct discussions with all responsible parties who submit proposals that pass the initial screening process described in Section 5 of this RFP.

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### **1.5.1 PROCUREMENT SCHEDULE**

DHS expects to adhere to the procurement schedule shown below. It should be noted, however, that dates are approximate and subject to change.

<b>ACTIVITY</b>	<b>DATE</b>
Release RFP	March 18, 2002
End of written questions	April 5, 2002
Responses to bidders question	April 12, 2002
Proposals due	May 17, 2002

### **1.5.2 COMMUNICATION WITH STATE STAFF**

From the date of issue of this RFP and until a determination is made and announced regarding the selection of a successful bidder as a result of the RFP process, and for the selected bidder until a contract is signed, all contact, except for those made pursuant to any pre-existing obligation, with personnel employed or under contract with the State of Maine, must be approved by the Maine Katie Beckett Contract Administrator. Violation of this restriction may result in disqualification of the bidder's proposal. The only exceptions to these restrictions are:

As described in this RFP, Section 1.5.4, Written Questions and Answers, bidders are advised that only members of the Department's Selection Committee in their official capacity can clarify issues or render any opinion regarding this RFP. No individual member of this Department, employee of the State or member of the Selection Committee is empowered to make binding statements regarding this RFP. Any clarification regarding the RFP will be issued in writing by the Maine Katie Beckett Contract Administrator on behalf of the Committee. No statements, clarifications, or opinions regarding this RFP are valid or binding except those issued in writing by the DHS's Contract Administrator.

### **1.5.3 CONTRACT ADMINISTRATOR**

The State's Katie Beckett Contract Administrator is:

Carole Kus, RN

Assistant Director, Division of Quality Improvement

Bureau of Medical Services

11 State House Station

Augusta, Maine 04333-0011

Telephone: (207) 287-3931

Fax number: (207) 287-6533

#### **1.5.4 WRITTEN QUESTIONS AND ANSWERS**

Any explanation regarding the meaning of any RFP provisions must be submitted in writing to the Katie Beckett Contract Administrator in an envelope clearly marked “Maine Katie Beckett Procurement Questions.” The requests can be made via fax to expedite them, however, DHS assumes no liability for assuring accurate/complete FAX transmission/receipt and will not acknowledge receipt except by addressing the question. The Katie Beckett Contract Administrator’s FAX number is (207) 287-6533. The deadline for receipt of questions is noon local time on the date specified in Section 1.5.1, PROCUREMENT SCHEDULE.

The Contract Administrator will respond in writing to all questions received in accordance with with 1.5.2 and only those explanations, clarifications, or instructions provided in writing will be binding upon the State. Any information provided to a bidder concerning the RFP will be provided to all bidders who requested the RFP.

#### **1.5.5 DISCLOSURE OF DATA**

According to State procurement law, the content of all proposals, correspondence, addenda, memoranda, working papers, or any other medium which discloses any aspect of the request for proposals process will be considered public information when the award decision is announced. This includes all proposals received in response to this RFP, both the selected proposal and the proposal(s) not selected, and includes information in those proposals which a bidder may consider to be proprietary in nature. Therefore, the State makes no representation that it can or will maintain the confidentiality of such information.

#### **1.5.6 COST RELATED TO PROPOSAL PREPARATION**

The entire cost for the preparation of a proposal, and the attendance at any Oral Presentation, or System Demonstration shall be borne by the bidder.

## **1.6 PROPOSAL SUBMISSION**

To facilitate the proposal evaluation process, one original and 5 copies of the entire proposal must be submitted by the proposal due date identified in Section 1.5.1. If mailed, proposals must be sent to:

**Department of Administrative and Financial Services**

**Division of Purchases**

**9 State House Station**

**Cross Office Building**

**111 Sewall Street, 4<sup>th</sup> Floor**

**Augusta, Maine 04333-0009**

The State accepts no responsibility for mislabeled mail.

The Technical Proposal must be packaged separately from the Cost Proposal and submitted in accordance with the instructions identified below.

**Proposals that arrive late even one minute or at a location other than noted above will be rejected.**

Emphasis should be placed on conformance to the RFP instructions, responsiveness to requirements, and completeness and clarity of content. Elaborate proposals are neither necessary nor desired. If the bidder's proposal is presented in a fashion that makes evaluation difficult or overly time consuming, it is likely that points will be lost in the evaluation process.

Each proposal part (Technical and Cost) must be bound separately on standard 8 ½" by 11" paper, except that charts, diagrams, and the like may be on fold-outs which, when folded, fit into the 8 ½" by 11" format. Pages may be consecutively numbered for the entire proposal, or may be numbered consecutively within sections. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

The Technical Proposal must not contain any mention of the dollar amounts in the Cost Proposal. However, information such as labor hours and categories, materials, subcontracts, and so forth, shall be contained in the Technical Proposal so that the bidder's understanding of the scope of the work may be evaluated. The Technical Proposal shall disclose the bidder's technical approach in as much detail as possible, including, but not limited to, the information required by the Technical Proposal instructions.

One copy of each proposal shall be signed by an official authorized to legally bind the bidder, and shall be marked "ORIGINAL."

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Each Technical and each Cost proposal shall be enclosed in a separate sealed envelope or package. One (1) original and 10 copy sets shall be packaged and addressed to the Contract Administrator at the address given in this Section. The face of the package containing the original and copies, whether mailed or hand delivered, shall include the following:

1. Name, address, telephone, and fax of the bidder;
2. Bid project name: Maine Katy Becket Proposal
3. "Technical proposal" or "Cost proposal"

The face of the envelope containing the original (original signature[s] required) shall be marked "ORIGINAL ENCLOSED."

### **1.7 REJECTION OF PROPOSALS**

DHS reserves the right to reject any or all proposals received. It is understood that all proposals, whether rejected or not, will become the property of DHS.

### **1.8 REVISION OF PROPOSALS**

DHS alone may elect to amend this RFP prior to the Proposal Due Date. If it is necessary to revise any part of this RFP, an Amendment will be provided to all potential bidders of record. Acknowledgement of the receipt of all issued Amendments is required in all proposals. In no case will the RFP be amended within seven (7) days of the Proposal Due Date, unless the Amendment includes an extension of time to allow seven days between the Amendment and the Proposal Due Date. DHS will not be responsible for any additional costs incurred as a result of said changes in the RFP.

### **1.9 PROPOSAL EVALUATION**

The State will evaluate the proposals in accordance with the criteria set forth in Section 5 of this RFP.

### **1.10 RIGHTS OF STATE GOVERNMENT**

This RFP does not commit DHS to award a contract, or pay any cost incurred in the preparation of a proposal for this RFP. DHS reserves the right to reject all proposals, and at its discretion may withdraw, cancel, or amend this RFP at any time.

DHS may by written notice revise and amend the solicitation prior to the due date for the proposal. If, in the opinion of DHS, revisions or amendments will require substantive changes in proposals, the due date may be extended.

DHS reserves the right to reject any and all proposals received, for specific reasons, which include but are not limited to non-compliance with the RFP.

By submitting a proposal in response to this RFP, the bidder grants to the Department the right to contact or arrange a visit in person with any or all of the bidder's clients.

## **1.11 FINANCIAL STABILITY**

Evidence of adequate financial stability is a prerequisite to the award of a contract. Bidders must include in the Technical Proposal financial documentation to establish their financial stability. This documentation must be submitted in accordance with the requirements of this RFP. DHS reserves the right to request any additional information to assure itself of a bidder's financial status.

## **1.12 SANCTIONS**

The Maine Katie Beckett project represents a significant undertaking for DHS and the selected bidder. Consequently, conformance with the requirements of the RFP are of paramount concern to DHS. Should the selected bidder fail to meet the obligations, the sanctions identified in this RFP may be applied. (Section 4.1.4.2. - Performance Standards)

## **1.13 INELIGIBLE BIDDERS**

Any bidder involved in the preparation of this Request for Proposal or in the evaluation of this proposal will not be permitted to bid or be selected to perform this contract. This restriction does not apply to procurements other than the implementation of Katie Beckett.

## **1.14 PROPOSAL VALIDITY**

Proposals must be valid for 180 days following the close date of this RFP. This period may be extended by written mutual agreement between the bidder and DHS.

## SECTION 2: GENERAL REQUIREMENTS

### KATIE BECKETT BENEFITS

The MaineCare Program is funded with approximately 67 percent federal and 33 percent State funds. Maine currently has approximately 200,000 eligible MaineCare Benefits clients at an annual cost of approximately \$1.25 billion dollars. Roughly 8,600 of these clients reside in long-term care facilities.

An estimated 1,350 children are eligible for the Katie Beckett Benefits. Although there are no specific services provided this eligibility makes funding available so that children with comprehensive medical conditions can remain in their homes rather than be institutionalized. The current cost for these benefits is \$37 million dollars.

After financial eligibility is established by the Bureau of Family Independence (BFI), an initial medical eligibility determination assessment is completed by the selected bidder, as specified below. An assessment of the child's medical condition is to be completed by a Registered Nurse utilizing the Medical Eligibility Determination form 3.0 (MED) and the established criteria listed in Appendices B – G. The selected bidder shall refer all beneficiaries with a diagnosis of mental retardation to the Department of Behavioral and Developmental Services (formerly Bureau of Mental Retardation, Mental Health and Substance Abuse Services). An annual assessment/reassessment of each child is required to determine if the child continues to meet the eligibility criteria.

### 2.1 COMPLETION OF MED ASSESSMENTS

- The first step in receiving any MaineCare benefits is completion of an application to establish financial eligibility. This is done by going to or calling any one of sixteen Bureau of Family Independence (BFI) Offices located throughout the State and requesting to apply for a Katie Beckett Assessment. Once the financial component is completed the BFI office then sends/faxes a request for a KB medical eligibility assessment to the selected bidder. (The request form from BFI must be made apart of the assessment packet.)
- The selected bidder is responsible for the assigning the requests for MED assessments to Registered Nurses within three (3) days of receipt. The MED assessment will be conducted by RNs with knowledge (of the multiple diagnoses/syndromes of children which cause delay/impairment in mental, emotional and/or physical growth and/or development) and experience (minimum of three years) of the pediatric population. The assessment will be preformed face-to-face in an office or home environment (unless otherwise approved in writing by DHS).
- The RN assessor will contact the child's mother, father or appointed contact person/legal guardian to explain the assessment process and schedule an appointment with the family/or legally responsible person. The telephone contact and scheduling an appointment shall be made within five (5) days of receipt of the assignment for an initial assessment. The assessment must be completed within five (5) days of verbal contact with the family/or legally responsible person.
- When a reassessment is requested, it must be assigned within three (3) days of receipt. Verbal verification and scheduling an appointment with the family/or legally responsible person must occur within five (5) days of receipt of assignment. The assessment must be completed within five (5) days of verbal contact.

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- If an assessment is required and the child is in the hospital, the assessor cannot complete the assessment until discharge is imminent (within the two (2) week period prior to discharge).
- When a child has been determined to be “Not Medically Eligible”, the assessor will fax a copy of the denial letter and assessment to DHS within three (3) working days of the denial.
- An assessment can be considered “not completed” and the request returned to BFI if there are three (3) documented attempts to unsuccessfully reach the family, legal guardian or appointed contact person.
- All assessments must be submitted to DHS within five (5) working days of completion.

### **2.2 WRITING HEARINGS REPORTS AND TESTIFYING AT HEARINGS**

- For each finding of “not medically eligible”, the assessor must give notice to the MaineCare beneficiary of his/her right to appeal. To appeal the adverse decision, the beneficiary must be instructed in the notice to submit a request for a hearing in writing to the Director of the Bureau of Medical Services. The Director will forward the request for a hearing to the Contract Administrator who will request that a hearing report be completed by the RN assessor.
- Following the directions in the “Administrative Hearings Regulation” (see Appendix F), the assessors complete an administrative hearing report for each appeal request. The report reflects the reasons for the denial, specifying what regulations were not met. The report must set forth the factorial basis that supports the “not medically eligible” classification.
- Copy all documentation used to support the decision to deny eligibility. The hearing report and copies of all documentation (to include the MED form) must be sent to the Administrative Hearings Unit with a copy of all material to the Contract Administrator within one week of receipt of the request to prepare the report.
- The RN assessor must attend all hearings to testify in support of the decision regarding eligibility and policy (See Appendix C-E).

### **2.3. QUALITY ASSURANCE ACTIVITIES**

- Accurate assessments and eligibility determinations are expected with an error rate not to exceed five (5) percent. Inaccuracies include (but are not limited to):
  - Incorrect coding
  - Blanks on the MED
  - Eligibility errors



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- Any assessments returned to the agency for corrections must be returned to DHS within ten (10) working days.
- The bidder's manager or supervisor will direct Quality Assurance activities by reviewing/delegating the review of a minimum of twenty (20) percent of all of the RN assessments for completeness and accuracy. The review must include selection of an equal number of assessments from each assessor.
- Quarterly QA activity reports of the review findings and recommendations will be submitted to DHS.

Standard reports are required. All proposed report formats and frequencies must be approved by DHS. At a minimum, the following report requirements must be met:

- A quarterly report which includes (but is not limited to) all assessments completed and number of those denied, closed for another reason and those eligible. For those eligible, list each classification type.
- A quarterly report on timeliness of completion and submission of assessments.
- A monthly list/report of all requests for assessment sent/faxed directly from the Bureau of Family Independence.
- Ad hoc reports upon request from DHS.
- Semi-annual report of hearings, the status of each hearing and the decision/s.

## SECTION 3: SCOPE OF WORK

This section describes the planned scope of work for the readiness review and operation of the Katie Beckett Assessment program.

### 3.1 OVERVIEW

The work to be performed by the proposed Contractor will include all tasks necessary to prepare, operate and maintain a Katie Beckett Assessment plan that meets all functional and technical requirements identified in Section 3 of this RFP. The project scope of work described in this section of the RFP is divided into two phases:

- The **Readiness Review** includes preparing for staff training and establishment of a quality monitoring system.
- The **Operations Phase** includes establishment of the processing of assessments from assignment to completion and submission to DHS, providing testifying at hearings, reporting, quality assurance activities and ongoing training.

Each phase is described in more detail below, and specific tasks, responsibilities, deliverables and performance criteria are specified.

#### 3.1.1 GENERAL CONTRACTOR RESPONSIBILITIES

The bidder has primary responsibility for the timely and successful completion of each of the tasks and timely operation of the Katie Beckett Assessment process. The bidder is responsible for timely weekly submission of completed assessments to the State in batches that can be tracked. Tracking will include date of submission, name of child and assessor on each page of each assessment and when the batch was mailed. The assessments are complete, accurate and meet the criteria defined in the “Instructions for completing the Medical Eligibility Determination Form” (Appendix G) and MMAM (Appendix C-E).

The standard bidder’s responsibilities for every task within the project are:

- Prepare a plan of action for each task listed in this RFP;
- Prepare a plan of action for deliverables and proposed schedule of completion.

### **3.1.2 GENERAL DHS RESPONSIBILITIES**

The Department shall:

- ❖ Designate a contract manager/administrator to represent the DHS on all matters pertaining to the contract. As part of the general contract administration, the contract manger or other designated entities will:
- ❖ Notify the contractor in a timely manner of all pertinent changes in MaineCare policy, State or Federal regulations that are relevant to the contractor's operations or activities.
- ❖ Regularly monitor contractor compliance with provisions, monitor progress towards improvement goals, and meet with contractor staff regularly and on as-needed basis to respond to contractor inquiries an to resolve problems associated with the implementation and operation of the Katie Beckett benefit.
- ❖ Conduct or oversee periodic audits of contractor operation under this contract, either by observation or on site or through the request of reports.
- ❖ Reimburse the contractor on a monthly basis in accordance with procedures described elsewhere in this RFP, upon receipt of a properly completed invoice.
- ❖ The task-specific responsibilities of DHS are identified in this section. There are, however, a number of responsibilities that apply to every task. The standard DHS responsibilities for every task within the project are:  
Review and approve or disapprove the proposed format and content of all task deliverables;  
Monitor bidder progress against the approved Detailed Work Plan; and serve as the final approval authority on scope of work issues.

## **3.2 BIDDER ORGANIZATION AND STAFFING**

The bidder is responsible for providing all resources necessary to develop, implement and operate the Katie Beckett benefit as specified in this RFP. Notwithstanding this general requirement, DHS requires that the bidder commit to certain dedicated staff resources who will act as single points-of contact, as specified below.

### **3.2.1 KEY PERSONNEL FOR OPERATIONS**

Key personnel required for the Operations Phase are:

#### **Project Manager**

The bidder must specifically identify to DHS the staff who perform this function and commit to the full-time availability during business hours of the Project Manager as point-of-contact during the operations phase of the contract. Replacement

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of proposed key staff by the bidder is subject to the approval of DHS. DHS reserves the right to require removal or reassignment of key personnel. If DHS intends to exercise this right, it will deliver written notice to the bidder at least thirty (30) days prior to the date it desires the staff change to take place.

### 3.3 READINESS REVIEW

The bidder must successfully complete all tasks necessary to plan and prepare for operation of the assessment process.

**Readiness Review** includes preparing for staff training and establishment of a quality monitoring system..

Staff training must commence and be completed within three (3) weeks of the contract initiation date. All training needs to be completed, so that scheduling and completion of assessments can begin by week four (4) of the contract (at the latest).

#### 3.3.1 TRAIN STAFF

The bidder shall be responsible for preparing staff training. Attendance at a training session will be mandatory for all staff prior to initiating operation in the Katie Beckett program. Ongoing training will be provided for new staff and when there are any changes to the policies or regulations. The bidder shall also be responsible for identifying training issues based upon evaluation of regularly scheduled needs assessments completed by the assessors.

##### 3.3.1.1 DHS Responsibilities

DHS responsibilities for this task are:

- Approve the final staff-training schedule;
- Approve staff training materials, including manuals and post-training evaluation forms;
- Provide representation at bidder conducted training sessions; and
- Approve modifications to training content made in response to trainee evaluations and/or any revisions to the system and/or new staff.

##### 3.3.1.2 Contractor Responsibilities

Contractor responsibilities for this task are:

- The bidder shall develop, print and distribute materials to all staff. In addition to initial statewide distribution of materials, the bidder will be responsible for keeping this material up-to-date and for producing and distributing it to their new staff. All of this material shall be subject to review by DHS, revision at DHS's request and shall require final written approval by DHS prior to distribution.
- Training must include a comprehensive presentation, of all topics listed in this section:

- Completion of MED Assessments
  - Writing hearings reports and understanding the appeals process
  - Testifying at hearings
  - MaineCare Policy and beneficiary rights
  - Quality Assurance activities.
- 
- Conduct staff training sessions according to the DHS approved plan and schedule;
  - Provide staff training materials including manuals and post-training evaluation forms;
  - Promptly analyze training evaluation forms completed by staff and modify training content to remedy deficiencies;
  - Conduct regularly scheduled (minimum of annually) assessor training “needs assessment”.

### **3.3.1.3 Deliverables**

The deliverables for this task must include, at a minimum proposed:

- Provider training materials;
- Provider training schedule;
- Notifications to staff; and
- Training evaluations and needs assessments completed by staff.

## **3.4. OPERATIONS**

The bidder must successfully complete all tasks necessary to implement the components listed in the previous phase and begin the assessment process by the week four (4) of the contract.

The operations phase of the Contract shall consist of a one (1) year base period, with the possibility of up to four (4) additional optional years of service to be provided by the Contractor in one year increments subject to the exercise of the option(s) by DHS.

### **3.4.1 COMPLETE ASSESSMENTS**

Immediately upon start of work the bidder will meet with the Contract Administrator to review and discuss all issues pertaining the schedule and work to be performed in implementing the Katie Beckett assessment system. Develop a plan to implement timely notification, completion and submission of accurate and thorough assessments.

#### **3.4.1.1. DHS Responsibilities**

- Review and approve work plan developed by bidder in accordance with procedures described.

#### **3.4.1.2. Contractor Responsibilities**

- Present schedule of notification, completion and submission of assessments.

#### **3.4.1.3. Deliverables**

- Timeline of notification process;  
and completion process ;  
and submission process

### **3.4.2 TESTIFYING AT HEARINGS**

Show evidence of staff training on the “Administrative Hearings Policy” to include testifying at hearings and beneficiary rights.

#### **3.4.2.1. DHS Responsibilities**

- Verify and approve training plans and assist when necessary to clarify policy questions.

#### **3.4.2.2. Contractor Responsibilities**

- Set up appointment with DHS and Hearings Unit to discuss the above stated topics.
- Incorporate all topics identified in 3.3.1 into training materials for staff
- Schedule training (See 3.3)
- Plan for assessor attendance at all hearings scheduled

#### **3.4.2.3. Deliverables**

- Training materials and schedule
- Evidence of training - Evaluations

### **3.4.3 QUALITY ASSURANCE**

The bidder will develop and monitor all Quality Assurance activities as set forth in Section 2.3.

#### **3.4.3.1 DHS Responsibilities**

- Review and approve QA plan developed by the bidder in accordance with the procedures described
- Review and approve schedule of activities, numbers of reviews and expected outcomes of the process
- Review and approve content of reports

#### **3.4.3.2. Contractor Responsible**

Contractor responsibilities for this task are:

Propose a plan to monitor the timeliness of completion and submission of assessments;

Propose schedules and content of QA and standard reports;

Evaluate the results of QA and develop a plan of correction for any negative findings;

Set perimeters for expected accuracy of the assessments, criteria must be established:

What will be reviewed

Frequency

Numbers

#### **3.4.3.3 Deliverables**

- QA schedule, frequency, content and expected outcomes
- A plan on how to accomplish task
- Mechanism for tracking assessments that includes the following (at a minimum):
  - Date of the request (from BFI or in the case of a reassessment – DHS);
  - Date of notification and confirmation with family or other legally responsible person;
  - Date of assessment completion;
  - Date of submission (to DHS)

## **SECTION 4: PROPOSAL PREPARATION INSTRUCTIONS**

This section describes the requirements that must be met by bidders in preparing the Technical and Cost Proposals. Bids may only be submitted by the Prime bidder who will be solely responsible for fulfilling all responsibilities described in the RFP. Failure to respond to a specific requirement may be the basis for elimination from consideration during the Department's comparative evaluation.

Proposal submission requirements are detailed in section 1 of this RFP. Proposals are due by the date shown in Section 1.5.1. Content requirements for technical and cost proposals are presented separately in the following sections.

### **4.1 TECHNICAL PROPOSAL**

The Technical Proposal shall consist of four (4) sections:

- Transmittal Letter,
- Executive Summary, and
- Management Approach;
- Technical Approach.

The Technical Proposal must be bound separately from the Cost Proposal and must contain no cost information.

#### **4.1.1 TRANSMITTAL LETTER (PROPOSAL SECTION I)**

The letter must be written on the bidder's official business stationery and signed by an official authorized to legally bind the bidder. It must include the following:

- An identification of the bidder as the Prime Contractor;
- An itemization of all materials and enclosures submitted in response to the RFP, including the page number on which each required section begins;
- A reference to any RFP amendments received by the bidder; if none have been received, a statement to that effect must be included;



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- Procedures, contract terms and conditions, and all other rights reserved to the State specified in this RFP;
- A statement certifying that no relationship exists between the bidder or any proposed subcontractor and the Department that interferes with fair and open competition or constitutes a conflict of interest, and that no relationship exists between the bidder and another person or organization that constitutes a conflict of interest with respect to an existing State contract;
- A statement certifying that the prices in the proposal have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other potential contractor or any other bidder; that the prices quoted within the proposal have not been knowingly disclosed prior to the proposal due date, directly or indirectly to any other potential contractor or any other bidder; and that no attempt has been made or will be made by the potential contractor to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition;
- A statement certifying that the organization is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;

### **4.1.2 EXECUTIVE SUMMARY (PROPOSAL SECTION II)**

The Executive Summary shall condense and highlight the contents of the Technical Proposal in such a way as to provide the Selection Committee with a broad understanding of the bidder's entire proposal. No evaluation points will be awarded for the Executive Summary.

Bidders should provide a high level description of the plan they propose to implement and the reasons that it is believed to satisfy the Department's needs and objectives to manage the KB Assessment program. This description should reflect all aspects of the program (as referenced in Section 2 and the scope of work in Section 3), and provide the Department with an understanding of how the program will operate once operational. Bidders must also present their understanding of the scope of work detailed in this RFP in Section 3. Finally, bidders should describe their qualifications (assessing and pediatric experience as referenced in Section 2) to perform the work required herein.

### **4.1.3 MANAGEMENT APPROACH (PROPOSAL SECTION III)**

The Management Approach section of the Technical Proposal must consist of the following sections:

- Bidder Identification and Information,

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- Financial Statements,
- Office Location,
- Relationships with the State,
- Contract Performance,
- Bidder Qualifications and Experience,
- Staff Qualifications,
- Project Management Plan.

The content requirements for each of the above sections is described below.

### **4.1.3.1 Bidder Identification and Information**

In response to this section of the RFP, bidders shall:

- State the organization's full company or corporate name and give the address of the organization's headquarters office;
- Specify how the entity is organized (proprietorship, partnership, corporation);
- Specify the state in which the bidder is incorporated or otherwise organized to do business;
- Specify the year in which the bidder was first organized to do business and whether or not the form of organization has changed in the interim (such as by subsequent incorporation, merger, or other organizational change) and any name changes; the intent of this requirement is to ascertain the longevity of continuous operation of the bidders, and the response should be formulated to provide that information as appropriate to the bidder's business circumstances;
- Specify if there are any plans for organizational changes that might occur by the time the contract is completed and
- Provide their Federal Employer Identification Number.

### **4.1.3.2 Financial Statement**

One of two (2) responses is required in this section, depending upon whether the bidder is publicly held or not. In addition if a change of ownership is anticipated the circumstances associated with the change must be described. Any proposed subcontractor whose percentage of work to be performed (measured as a percentage of total contract price) equals or exceeds 20 percent must submit the required bidder information as well.

#### **4.1.3.2.1 Publicly Held**

If the bidder is a publicly held corporation, enclose a copy of the corporation's most recent three (3) years of audited financial reports and financial statements and the name, address and telephone number of a responsible representative of the bidder's principal financial or banking organization. Additionally, the bidder must disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the organization; or warrant that no such condition is known to exist.

#### **4.1.3.2.2 Not Publicly Held**

If the bidder is not a publicly held corporation, the bidder may either comply with the preceding paragraph or:

- Describe the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information in such a manner that proposal evaluators may reasonably formulate a determination about the stability and financial strength of the organization;
- Provide a banking reference;
- Disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals which might materially affect the viability or stability of the bidding organization; or warrant that no such condition is known to exist.

#### **4.1.3.2.3 Change in Ownership**

If any change in ownership or control of the company is anticipated during the twenty-four (24) months following the proposal due date, describe the circumstances of such change and indicate when the change will likely occur.

#### **4.1.3.3 Office Location**

The successful bidder's office space will be adequately equipped to hold meetings, conduct business, and for DHS personnel to work with the contractor.

The successful bidder shall be responsible for all costs related to securing and operating each facility, including, but not limited to, leasehold improvements, utilities, security, telephone, office equipment, supplies, janitorial services, storage, transportation, and insurance.

#### **4.1.3.4 Relationships with the State**

In this section, the bidder shall describe any relationships it may have had with the State over the last twenty-four (24) months.

#### **4.1.3.4.1 Prior and Existing Contracts**

If the organization, its predecessor, or any party named in the bidder's response to this RFP has previously contracted with the Department, identify the contract number and/or any other information available to identify such contract(s). If no such contracts exist, so declare.

#### **4.1.3.4.2 Bidder's Employee Relations to State**

If any party named in the bidder's response to this RFP is or was an employee of the State of Maine within the past twenty-four (24) months, identify the individual(s) by name, Social Security Number, State agency by which employed, job title or position held with the State, and separation date. If no such relationship exists, so declare.

#### **4.1.3.4.3 Persons Employed by both State and Bidder**

If any employee of any agency of the State of Maine is employed by the bidder, or is a subcontractor to the bidder, as of the due date for proposal submission, identify all such persons by name, position held with the bidder, and position held with the State (including job title and agency). Describe the responsibilities of such persons within the proposing organization. If, after review of this information by the State, it is determined that a conflict of interest exists or may exist, the bidder may be disqualified from further consideration in this procurement. If no such relationship exists, so declare.

#### **4.1.3.5 Contract Performance**

If the bidder has had a contract terminated for default during the past five (5) years, all such instances must be described as required below. Termination for default is defined as notice to stop performance delivery due to the bidder's nonperformance or poor performance and the issue was either (a) not litigated due to inaction on the part of the bidder; or (b) litigated and such litigation determined the bidder to be in default.

It is mandatory that bidders submit full details of all terminations for default experienced by the bidder during the past five (5) years, including the other party's name, and address and telephone number. The response to this section must present the bidder's position on the matter. The State will evaluate the facts and will score the bidder's proposal accordingly.

If no such terminations for default have been experienced by the bidder in the past five (5) years, so declare.

If at any time during the past five (5) years, the bidder has had a contract terminated for convenience, nonperformance, non-allocation of funds, or any other reason, which termination occurred before completion of all obligations under the

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initial contract provisions, describe fully all such terminations including the name and address of the other contracting party and the circumstances surrounding the termination. If no such early terminations have occurred, so declare.

### **4.1.3.6 Bidder's Qualifications and Experience**

In this section, bidders must provide detailed information on corporate and staff experience during the last five (5) years directly related to the proposed contract, including all relevant experience. Descriptions shall be organized into the experience categories shown below in Section 4.1.3.6.1.

#### **4.1.3.6.1 Summary of Bidder's Corporate Experience**

Bidders shall complete the summary matrix, provided in Exhibit 2, which lists the bidder's previous projects similar to the KB project in size, scope and complexity. For each project, the matrix must show whether specific types of experiences were utilized.

#### **4.1.3.6.2 Narrative Description of Experience**

For each project offered as experience related to the Maine project, bidders shall provide a narrative description of the work performed; the time period of the project; the staff-months expended; the scheduled and actual (or planned) completion dates; hardware, the bidder's responsibilities; the amount budgeted for the project; and a customer reference (including current phone number).

### **4.1.3.7 Staff Qualifications**

Bidders shall complete the staff skills matrix provided in Exhibit 3 to summarize relevant experience of the proposed staff. Additionally, bidders must provide a brief narrative description of experience each key staff member has in the areas relevant to this procurement. The assessors must be Registered Nurses licensed to practice in Maine.

Descriptions should focus on key staff experience in the areas listed below:

- MaineCare experience
- Knowledge of Katie Beckett eligibility criteria
- MaineCare beneficiary rights (Chapter 1 – MMAM)
- Assessment skills and experience (if applicable)
- Knowledge and experience in Pediatrics (as referenced in Section 2)

- Knowledge of the appeals process and testifying at hearings
- Experience writing hearing reports and/or other reports

The staff qualifications section shall include the bidder's proposed project team organization charts, descriptions of key positions shown on the chart, followed by resumes of the proposed personnel.

#### **4.1.3.7.1 Project Organization Charts and Position Descriptions**

Bidders shall comply with the following instructions in preparing organization charts and position:

The project organization charts shall depict the project organization from the highest management level to at least the team leader level, shown functional responsibilities, and key personnel.

Position descriptions shall be provided for each position shown on the organization charts; these shall address the duties, functional responsibilities, and general qualifications of the position.

#### **4.1.3.7.2 Key Personnel and Resumes**

At a minimum, resumes shall be required for the following key personnel:

- Project Manager
- Registered Nurses

Representative resumes for other types of staff which the bidder plans to use on the Katie Beckett project should be provided to substantiate that the bidder possesses resources sufficient to carry out the requirements of this RFP.

#### **4.1.3.7.3 Resume Information Required**

Resumes should address experience with:

- Items listed in 4.1.3.7

The resumes should be formatted as follows:

- |                                  |                     |
|----------------------------------|---------------------|
| • Name (first, last)             | • Present Title     |
| • <u>Job A</u>                   | • Title of Position |
| • Employed From (mo., day, year) |                     |

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- Employer Name and Current Phone Number
- Employer Address

### Job B

- Employed from (mo., day, year)
- Title of Position
- Employer Name and Current Phone Number
- Employer Address

(Continue with Additional Jobs C, D...as needed)

### Educational Background

- Schools attended After High School
- Dates of Training
- Name of School and City/State Location
- Dates Attended (From:MO/YR. To MO/YR.)
- Type of Degree and Date Received
- Training –
- Type of Training
- Location of Training

### References (3)

- Name and Position
- Current Telephone Number
- Relationship (Personal Friend, Manager, Co-worker...)

### **4.1.3.8 Project Management Plan**

In this section, bidders must present a management-level description of their proposed approach to project management as applicable to the tasks described in Section 3. Samples of project status reports and outputs from automated project management/control tools should be provided whenever possible.

Specifically, this section shall address:

- Methods for project status reporting, including examples of such reports;
- Project management and control tools (automated and manual);
- Internal management structure, including a functional organization chart;
- Staffing and time-estimating procedures;

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- Approach to managing subcontractors (if any are proposed); internal quality control monitoring to produce deliverables, including sign-off procedures for completion of deliverables and major activities;
- Approach to problem identification and resolution;
- Any assumptions or constraints.

### **4.1.4 TECHNICAL APPROACH (PROPOSAL SECTION IV)**

Bidders are required to respond using the same numbering sequence found in Sections 3 and 4 of the RFP. The Technical Approach section of the Technical Proposal must consist of the following sections:

- Understanding of Project Requirements;
- Technical Consideration;
- Project Work Plan; and
- List of Deliverables and Due Dates

The content requirements for each of the above Sections are described below.

#### **4.1.4.1 Understanding of Project Requirements**

This section shall demonstrate the bidder's understanding of the background and objectives of the Maine Katie Beckett project. It must address:

- A general discussion of the plan being proposed; and anticipated problem areas in the operation of Katie Beckett Assessment process, and methods proposed for overcoming, minimizing, and/or avoiding problems.
- This section must also provide a step by step description of how Katie Beckett Assessment process is envisioned to work when operational in the Maine environment. All functions, features, and other requirements described in Section 3 of this RFP should be addressed. The discussion of each activity will include a description of how the function will be provided and how the plan components will interact to meet the requirement.



#### **4.1.4.2 Performance Standards**

In the event the selected bidder fails to meet or exceed the following performance standard then the contractor shall be sanctioned. All assessments (with an attached invoice) must be received in the Augusta DHS office within one (1) month of the request from BFI (unless an extension has been granted by the Contract Administrator). The unit price for each assessment that is submitted more than fourteen (14) days of the request from BFI will be reduced by ten percent per day for five (5) days. If the assessment is not completed by day twenty (20), no payment will be authorized for this assessment.

The bidder shall describe the approach and methods it will use to meet the performance standards identified in Section 2 & 3 of this RFP including:

- The bidder shall be responsible for the assigning the requests for MED assessments to Registered Nurses within three (3) days of receipt.
- The RN assessment will contact the family or legally responsible person to set up appointment with the family. The telephone contact shall be made within five (5) days of receipt of the assignment. The assessment must be completed within five (5) days of verbal contact with the family or legally responsible person.
- When a reassessment is requested the verbal verification and scheduling an appointment with the family or legally responsible person must occur within five (5) days of receipt of the assignment. The assessment must be completed within five (5) days of verbal contact with the family or legally responsible person.
- If an assessment is required and the child is in the hospital, the assessor must not complete the assessment until a minimum of two (2) weeks prior to discharge.
- When a child has been determined to be “Not Medically Eligible”, fax a copy of the denial letter and assessment to DHS within three (3) working days.
- All assessments must be submitted to DHS within five (5) working days of completion.
- The hearing report and copies of all documentation (to include the MED form) must be sent to the Administrative Hearings Unit with a copy of all material to the Contract Administrator within one (1) week of receipt of the request.
- Any assessments returned to the agency for corrections must be returned to DHS within ten (10) working days.
- Twenty (20) percent of all of the RN assessments are reviewed for completeness and accuracy by the contractor. Include selection of an equal number of assessments from each assessor. Quarterly QA activity reports of the review findings and recommendations will be submitted to DHS.

Standard reports.

- A quarterly report which includes (but is not limited to) all assessments completed and number of those denied, closed for another reason and those eligible. For those eligible, list each classification type.
- A quarterly report on timeliness of completion and submission of assessments.
- A monthly list/report of all requests for assessment sent/faxed directly from the Bureau of Family Independence.
- Semi-annual report of hearings, the status of each hearing and the decision/s.

#### **4.1.4.3 Project Work Plan**

The bidder must include a detailed schedule of activities that complies with the State's required timeframe of July 1, 2002. Include a narrative description of the bidder's plans for accomplishing the work outlined in the RFP scope of work. The work plan should also address all tasks and activities required to accomplish the readiness review requirements of this RFP. For each activity, the bidder must propose a deliverable item. A deliverable is defined as tangible evidence of work completed. Each deliverable must be cross referenced to the appropriate RFP task. The schedule shall depict:

- Major milestones as envisioned by the bidder;
- Deliverable submission dates;

#### **4.1.4.4 List of Deliverables and Due Dates**

This section shall include a list of all implementation deliverables to be produced by the selected Contractor and the due dates of those deliverables. DHS reserves the right to conduct multiple reviews of any proposed deliverable.

## **4.2 COST PROPOSAL REQUIREMENTS**

This section describes the requirements to be addressed by bidders in preparing the Cost Proposal. The Cost Proposal must be submitted according to the instructions in Section 1, and must comply with the requirements presented in this section. DHS reserves the right to review all aspects of the Cost Proposal for reasonableness and to request clarification of any Proposal where the cost component shows significant and unsupported deviation from industry norms or in areas where detailed pricing is required.

The bidder must submit its Cost Proposal separate from its Technical Proposal. The Cost Proposal shall include the following sections:

- Transmittal Letter; and
- Cost Schedules A & B

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The required cost schedules are contained in Exhibit 4 of this RFP. These schedules must be completed and submitted by the bidder. The bidder's cost schedules must conform exactly to the format of the schedules contained in Exhibit 4. All forms are mandatory. If the bidder does not complete and submit all schedules, the bidder's proposal may be rejected. An official authorized to legally bind the bidder must sign all cost schedules supplied in the "original" Cost Proposal (refer to section 1.6). All signatures must be originals, in ink. Signature stamps are not acceptable. If required signatures are not provided, the bidders proposal may be rejected. All cost schedules must include the bidder's name and address.

## **4.2.1 BID PRICE AND SUPPORTING DETAIL**

The price of the service must be provided by total for each individual assessment as forth in this RFP. The price must be provided by submitting cost schedules equivalent to those described below. Samples have been provided in Exhibit 4 of the RFP labeled as follows:

- Cost Schedule A – Summary;
- Cost Schedule B – Operations.

Each of the above categories captures a component of the Maine Katie Beckett costs over the entire life of the contract. The sum of specific itemized costs will represent the Bidder's total firm fixed price to perform all tasks and produce all deliverables necessary to meet the functional, technical, and performance requirements of this RFP.

### **4.2.1.1 Pricing Summary (Schedule A)**

This schedule shall present the total firm fixed price to perform all requirements of the RFP. It reflects the cost for Operations per unit of service for one year.

The Department offers no assurances that the claim volume estimate used on this cost schedule will represent actual claim volume for the operational period.

### **4.2.1.2 Operations Costs\_(Schedule B)**

The total lines 1 to 10 represent the cost of performing one assessment. Line eleven (11) is the estimated units of service for a one year period. Multiply the total of 10 X the estimated number of Assessments (units) for one year. Transfer the total at 11 to line 1 on Schedule A.

The totals line on Schedule A is the amount that will be used for the scoring of cost proposals. This schedule must be signed and dated by an authorized representative of the bidder.

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Schedule B is to present all prices bid for operations during the initial one year period. The DHS's primary interest is in obtaining the lowest possible per claim price.

Prices for one or all of the four optional years will be negotiated if and when DHS elects to exercise its option, but in no event may the option year costs exceed the claims processing amounts bid for the initial one year contract plus a percentage increase equal to the Consumer Price Index increase for the same time period.

## **SECTION 5: EVALUATION APPROACH**

This section describes the approach DHS will use to evaluate proposals submitted in response to this RFP. It identifies the point values available for various parts of the proposals, and discusses the selection and award process.

### **5.1 OVERVIEW**

The State of Maine will conduct a comprehensive, fair, and impartial evaluation of proposals received in the response to this RFP. The Department will select the successful bidder through a formal evaluation process, established prior to the opening and evaluation of proposals, and remaining fixed through the remainder of the procurement cycle. Consideration will be given to capabilities or advantages which are clearly described in the proposal, confirmed by oral presentations, interviews and verified by information from reference sources contacted by the Department. The Department reserves the right to contact individuals, entities or organizations who have had recent dealings with the bidder or staff proposed for this effort whether they are identified as references or not.

Technical and Cost Proposals will be evaluated separately, with technical comprising sixty (60) percent of the final score, and cost comprising forty (40) percent. Technical and cost proposal scores will be combined to determine the overall ranking of potential Contractors.

#### **5.1.1 Acceptance Of Proposals**

All proposals properly submitted will be accepted by DHS. However, the State reserves the right to request necessary amendments, reject any or all proposals received, or cancel this RFP, according to the best interests of DHS.

#### **5.1.2 Disposition Of Proposals**

All proposals shall become the property of the State of Maine and will be a matter of public record.

#### **5.1.3 Evaluation Participants**

DHS will establish a formal Selection Committee to assist the State in selecting a Contractor, in completing all steps of the evaluation, and in making a final recommendation for selection to the Commissioner of the Department of Human Services and the Contract Review Committee.

## KATIE BECKETT BENEFIT REQUEST FOR PROPOSAL

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The Selection Committee will be responsible for evaluating the Technical and Cost Proposals, including the final scoring of all proposals, resolving compliance issues, and preparing the final report which recommends a bidder for selection. In order to bring an array of expertise to the process, the Selection Committee will be comprised of persons from four distinct Units.

The State may designate other professional staff to serve as technical advisors during the selection process. The State reserves the right to alter the composition of the committee or to designate other staff to assist in the process or to use consultants to assist in evaluation support activities.

### 5.2 INITIAL SCREENING OF PROPOSALS

The purpose of this step is to determine if each Technical Proposal is sufficiently responsive to the RFP to permit its complete evaluation. The initial screening is intended to ensure that the instructions contained in Section 1 and 5 of this RFP have been followed, and that all required items are provided and signed by a representative of the bidder's to legally authorized to bond.

Only those proposals meeting the requirements of RFP Sections 1 and 5 as to packaging, format and organization will be evaluated further. Failure to submit the proposal on time, to comply with the RFP instructions, or submission of an incomplete proposal, may cause a proposal to be disqualified. Technical proposals will be disqualified if they contain cost or pricing data, or if they are found to have significant inconsistencies or inaccuracies.

### 5.3 TECHNICAL EVALUATION APPROACH

When each technical proposal has been scored, the scores of the responsive bids will be ranked, and the highest scoring bidder will receive 100 hundred (100) relative points.

All proposals received will be reviewed and evaluated by a committee designated by the Department. This committee will review and evaluate the information contained in the technical proposal, and will separately review and evaluate the information contained in the cost proposal. The committee will summarize and document its findings and recommendation for award. The relative weights given to each portion of the proposal are shown below:

<u>Technical proposal</u>	<u>90 points</u>	
Proposed Method of Performance	70 points	
Corporate Experience	10 points	
Expertise of Personnel	10 points	
<u>Cost proposal</u>	<u>60 points</u>	
Total		150 points

### **5.3.1. Initial Review**

Only those proposals passing the initial screening will be evaluated for technical merit. The Technical Proposal evaluation will cover three (3) categories totaling ninety (90) points. The available points will be distributed as follows:

In order to be considered for evaluation, all proposals submitted in response to this RFP must satisfy all minimum requirements described in this RFP. The evaluation committee will review all proposals to determine compliance with these requirements. The evaluation committee may, at its discretion, determine that non-compliance with any requirement is insubstantial and can be corrected. In such cases, the evaluation committee may seek clarification, allow the bidder to make minor corrections, apply appropriate penalties in the evaluation, or any combination of these remedies. Substantial non-compliance may result in disqualification of a bidder's proposal.

### **5.3.2. Evaluation of Proposed Method of Performance**

The evaluation committee will review the technical proposal and evaluate the bidder's proposed method of performance based on the proposal's strengths in the following general areas:

**a. Overview and Approach**

The evaluation process will rate the strength of the bidder's overall approach to meeting the requirements of the RFP, and the extent of the bidder's understanding of the objectives that the RFP is intended to meet, the nature of the required work and level of effort necessary to successfully complete the project. In particular, the review will look for indication of the bidder's understanding of the recipient population, and the proposed approach to recipient outreach and education.

**b. Detailed Plans, Methods and Deliverables**

The evaluation process will rate the strength of the bidder's proposed approach and methods for completing all tasks and sub-tasks required by the RFP scope of work, the significance of the proposed deliverables to each task and sub-task, and the degree of appropriateness and attainability of the plans and methods as they relate to the goals of the project. This review will also include the bidder's proposed staff training program. If the bidder chooses to submit samples of educational materials to be used, those materials submitted must be at the sixth grade reading level and appropriate for the targeted population.

**c. Project Management**

The evaluation process will rate the strength of the bidder's proposed approach and specific activities that will be used to manage the project, including the bidder's plans to supervise and monitor contractor staff, to interface with appropriate community service groups, and to coordinate with the DHS Contract Administrator.

**d. Project Scheduling and Control**

The evaluation process will rate the timeliness, attainability, and adequacy of the bidder's proposed project time frames and the methods used to manage contractor activities.

**e. Management Information Systems**

The evaluation process will rate the strength of the bidder's proposed computer system related to this project. The degree of clarity and specificity of the descriptions, charts, and other methods used to describe the information management systems will be considered in the evaluation of this component of the bid.

**f. Potential Problems**

The evaluation process will rate the strength of the bidder's analysis of potential problems that may be encountered during this project and the robustness of the potential solutions to those problems.

**5.3.3. Evaluation of Corporate Experience**

The evaluation committee will review the technical proposal and rate the strength of the bidder's range of or similar contractor with Maine Care or any other experience relevant to the conduct of this project. Relevant past or current working relationships with state agencies, human service organizations, or community service groups will also be considered, as will the management structure of the bidder's organization and its relationship(s) with any parent organizations, subsidiaries or subcontractors.

**5.3.4. Evaluation of Expertise of Personnel**

The evaluation committee will review the technical proposal and rate the strength of the bidder's proposed management and day-to-day personnel who are to be assigned to the project, including the qualifications, training, experience, and education of those personnel.

**5.3.5. Evaluation of Cost**

The evaluation committee will analyze the bidder's cost proposal. Besides examining the proposed costs and staffing levels within each budget category, the committee will evaluate the soundness of the assumptions and projection methods used to arrive at the costs, and the completeness of the supporting documentation. The committee will then rank each proposal according to criteria that consider both the quality and amount of the bidder's cost proposal.

**5.4 COST EVALUATION APPROACH**

Cost proposals will be evaluated for each bidder that passes the initial screening process. The Cost Proposals for these bidders will be evaluated to determine their compliance with the instructions to bidders given in Section 5 and Attachment #1 of this RFP. Cost Proposals that fail to pass preliminary screening criteria will be rejected.

Each Cost Proposal will be examined to determine whether the calculations shown on the various pricing schedules are accurate. Any cost proposal that is incomplete or in which there are significant inconsistencies or inaccuracies on pricing schedules may be rejected by the State. No deviations, qualifications, or counter-offers to RFP requirements and requested formats will be accepted.



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Each cost proposal found acceptable following preliminary screening, and which is sufficiently complete and accurate, will be awarded a relative score. The lowest bidder will be awarded sixty (60) points (as shown above).

### **5.5 SCORING AND RANKING OF PROPOSALS**

After the Cost Proposals have been reviewed and point-scored by the Selection Committee, the Selection Committee shall meet to review the results of each component part of the evaluation process.

When the Selection Committee is satisfied that the evaluation process was followed, final point scores from each qualifying Technical and Cost Proposal will be tallied and combined to result in the final ranking. The Committee will document its selection decision, prepare an evaluation report detailing its reason for selection, and make a recommendation for selection to the Commissioner, DHS.

### **5.6 SELECTION AND AWARD**

The State's evaluation will result in the selection of a proposal which, taken as a whole, is most advantageous to the State from all aspects, including cost and technical score. After analysis, evaluation and validation of bidder responses, the Department will notify the apparently successful bidder in writing concerning its selection. Bidders not selected will also be notified in writing at this time.

Final contract award is contingent upon approval of the State Department of Human Services, the Contract Review Committee, and the federal funding agencies. It is to be understood by all parties that the contract award will be made in the best interest of the State and that the award decision shall be final. The State reserves the right to execute the signed contract submitted with the bidder's proposal or to initiate contract negotiations with the selected bidder.

### **5.7 PROPOSAL EVALUATION**

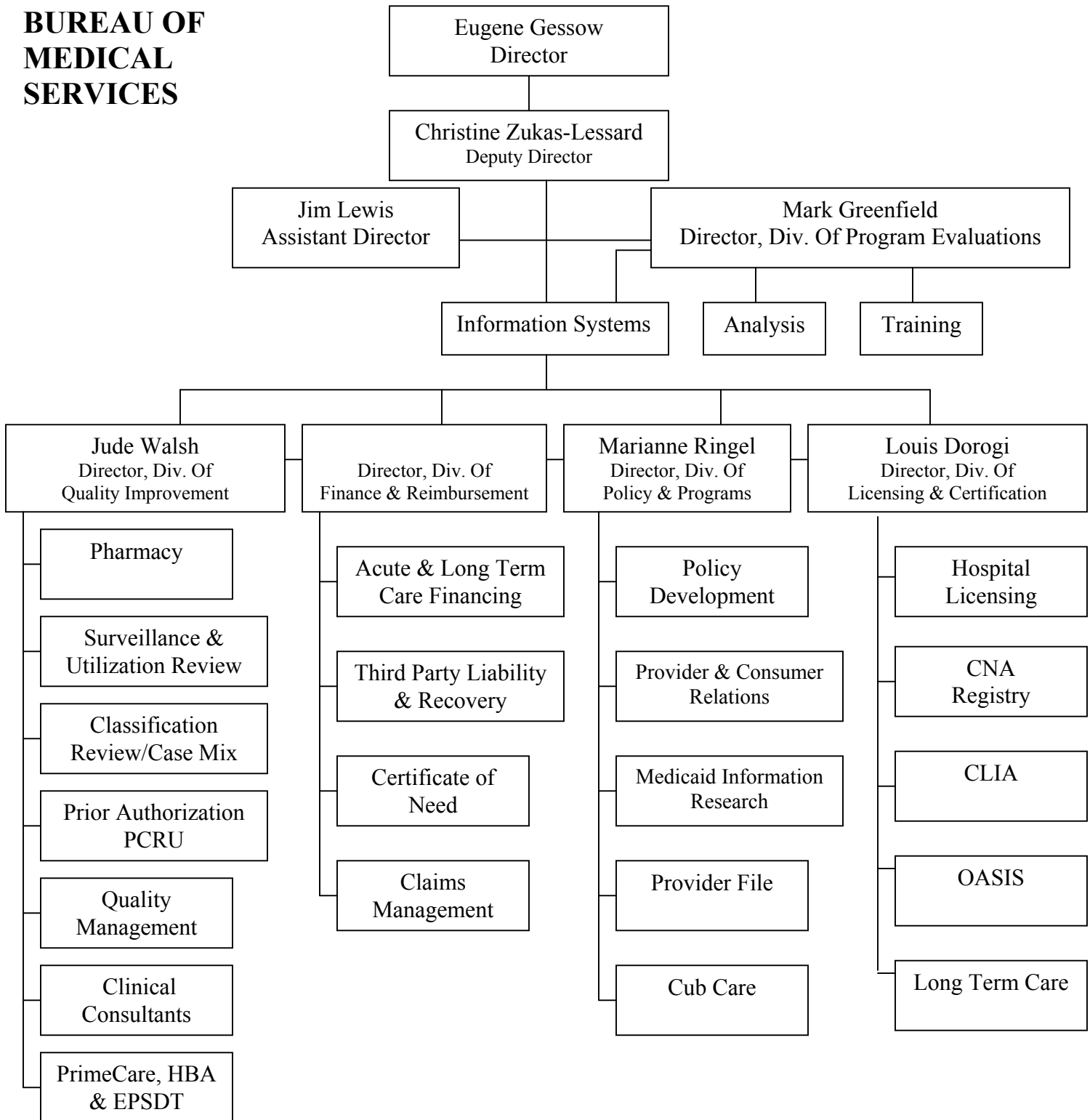
The State will evaluate the proposals in accordance with the criteria set forth in this RFP. After submission of proposals and closing thereof, no information about the evaluation process status will be furnished until after the award is made.

### **5.8 CANCELLATION OF THE REQUEST FOR PROPOSAL (RFP)**

This RFP does not commit the State to awarding a contract. The State may cancel this RFP in whole, or in part, at any time, or reject all proposals submitted, as its sole discretion.

**Exhibit 1**

**BUREAU OF  
MEDICAL  
SERVICES**



**Exhibit 2**

**CORPORATE EXPERIENCE MATRIX**

<b>Type of Experience</b>	
Management experience;	
Operation of MaineCare eligibility assessment project;	
Experience with MaineCare;	
RN Assessors assessing experience;	
RN Assessors experience in Pediatrics;	
Experience and knowledge of Quality Assurance systems;	
Experience and/or knowledge with the appeals process and testifying at hearings;	
Experience in training packages, particularly staff training;	
Experience writing reports;	
Experience writing QA and standard reports.	

**Exhibit 3**

**STAFF SKILLS MATRIX**

Type of Experience	Staff Member 1	Staff Member 2	Staff Member 3
Assessing Experience;			
Pediatric Experience;			
MaineCare Policy Experience;			
Experience testifying;			
Experience with the Hearing process;			
Telecommunications experience;			
Writing Reports;			
Education and training experience.			

# Exhibit 4

## COST SCHEDULE

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State of Maine

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**COST SCHEDULE A  
SUMMARY**

1. Total Operations Cost (line 11 B)

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Date

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Signature of Individual Authorized to  
Legally Bind the Bidder

Bidder Name and Address:

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KATIE BECKETT BENEFIT  
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**COST SCHEDULE B**

**OPERATIONS**

1. MED Assessment \_\_\_\_\_
2. Adm. Hearings Prep and Attendance \_\_\_\_\_
3. Training \_\_\_\_\_
4. Report Production \_\_\_\_\_  
    QA reports \_\_\_\_\_  
    Standard reports \_\_\_\_\_
5. Phone \_\_\_\_\_
6. Mailing and Postage \_\_\_\_\_
7. Training \_\_\_\_\_
8. General Assistance \_\_\_\_\_
9. Clerical Support \_\_\_\_\_
10. Total Costs (total of lines 1 through 10) \_\_\_\_\_

11. Multiply by Estimated Unit of Service

For One Year Operational Period                      X 1300

(transfer to line 1 on Schedule A) \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Individual Authorized to Legally  
Bind the Bidder

Bidder Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# APPENDIX A

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## State of Maine

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### Sample Contract

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KATIE BECKETT BENEFIT  
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**State of Maine**

**REQUISITION FOR CONTRACT/GRANT AUTHORIZATION**

Department: <u>Human Services</u>	Date: _____
Contractor: _____	Contact: _____
Contractual Services: _____	Telephone: _____
_____	Contract Sum: _____
_____	Approp: _____
_____	Term: _____

NOTE: Respond to all questions below applicable to this contract. Additional pages may be attached as necessary.

**SUBSTANTIATION OF NEED:** (Include statutory cite, cost savings, if any, and history of the contracting relationship)

**IMPACT OF CONTRACT ON CIVIL SERVICE SYSTEMS:** (Describe any displacement/dislocation of State Employees)

None.

**EMPLOYER/EMPLOYEE RELATIONSHIP BETWEEN STATE AND CONTRACTOR:**

None.

**EFFECT ON STATE AFFIRMATIVE ACTION EFFORTS:**

None.

**JUSTIFICATION FOR SOLE SOURCE PROCUREMENT:** (if applicable)

N/A

MSEA REVIEW: Date Forwarded: ( ) Info Request ( ) Conference Date Cleared: \_\_\_\_\_

File No.

Please forward

to: Bureau of Purchases, State House Station No. 9, Cross Office Building, 11 Sewall Street, Augusta, Maine  
04333

BP37R REV 1/95

KATIE BECKETT BENEFIT  
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STATE OF MAINE  
DEPARTMENT OF HUMAN SERVICES  
**AGREEMENT TO PURCHASE SERVICES**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between the State of Maine, Department of Human Services, hereinafter called "Department," and \_\_\_\_\_, located at \_\_\_\_\_, telephone number \_\_\_\_\_, hereinafter called "Provider", for the period of \_\_\_\_\_ to \_\_\_\_\_.

The Employer Identification Number of the Provider is \_\_\_\_\_

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

Rider A - Specifications of Work to be Performed  
Rider B - Payment and Other Provisions  
Rider C - Exceptions  
Rider D - Additional Requirements  
Rider E – Further Requirements

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in \_\_\_\_\_ original copies.

**DEPARTMENT OF HUMAN SERVICES**

By: \_\_\_\_\_  
Rudolph Naples, Deputy Commissioner  
and  
\_\_\_\_\_

By: \_\_\_\_\_  
Name and Title, Provider Representative

Total Agreement Amount: \$ \_\_\_\_\_

\_\_\_\_\_  
State Controller

\_\_\_\_\_  
Approved:  
Chair, State Purchases Review Committee

BP54 (Rev 4/98)

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MFASIS ACCOUNT CODING

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

VENDOR CODE	DOC TOTAL	FND	AGY	ORG	SUB ORG	APPR	ACTIVITY	OBJ	SUB ORG	JOB NO.	REPT. CATG.

**RIDER A**

**SPECIFICATIONS OF WORK TO BE PERFORMED**

**RIDER B**

**METHOD OF PAYMENT AND OTHER PROVISIONS**

1. **AGREEMENT AMOUNT** \$ \_\_\_\_\_

2. **INVOICES AND PAYMENTS** The Department will pay the provider as follows:

The Department and Provider have identified certain deliverables on which payment will be based. Payment deliverables are those that represent the completion of major phases of the project. The payment deliverables are detailed in the Updated Detailed Project Plan.

Payment deliverables are predicated upon successful completion and written approval by the Department of the described tasks and deliverables. Payments will be made to the Provider after written approval of the payment deliverable. The Department will make payments to the Provider within thirty (30) days after approval of the invoice by the Contract Administrator, subject to the availability of funds.

In the event the selected bidder fails to meet or exceed the performance standard (listed in 4.1.4.2) then the contractor shall be sanctioned. All assessments (with an attached invoice) must be received in the Augusta DHS office within one (1) month of the request from BFI (unless an extension has been granted by the Contract Administrator). The unit price for each assessment that is submitted more than fourteen (14) days of the request from BFI will be reduced by ten (10) percent per day for five (5) days. If the assessment is not completed by day twenty (20), no payment will be authorized for this assessment.

Payments are subject to the Provider's compliance with all items set forth in this Contract.

**2.1 Invoices**

Invoices for payment, submitted on approved Department invoice forms, shall be submitted to the Department's Contract Administrator at the address given in Section 6 of this Rider B. No invoices will be processed for payment until approved by the Department's Contract Administrator.

**2.1 Method Of Charging**

The charges described in this Contract are the only charges now or hereafter to be levied by the Provider for the services to be performed by it. There are no other charges to be made by the Provider to the Department.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

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5. **DEPARTMENT'S REPRESENTATIVE** The Contract Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **CONTRACT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: Carole Kus, RN  
Title: Assistant Director, BMS, DHS Division of Quality Improvement  
Address: 11 State House Station  
Augusta, Maine 04333-0011

who is designated as the Contract Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Contract Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Contract Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services there under.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Contract Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or physical or mental disability.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

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b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so

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that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO RECORDS** The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials, equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance



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upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **LIMITATION OF LIABILITY** The State Held Harmless provision in Paragraph 18, above, shall be subject to the limitation of liability stated in this Paragraph 19. The provider's, its employees', agents', or subcontractors' liability for claims as described in Paragraph 18 shall be limited to Twenty-Five Million Dollars (\$25,000,000) in the aggregate for all claims, regardless of the form of action (whether in contract or in tort, including negligence), except as otherwise stated in subparagraphs 19 (a) or (b), below.

The Twenty-Five Million Dollar (\$25,000,000) aggregate limitation of liability is the maximum dollar amount for which, collectively, the Provider, its employees, agents, or subcontractors, shall be liable for claims described in Paragraph 18, except as otherwise stated in subparagraphs 19(a) or (b), below.

- (a) Claims Not Subject to the Limitation of Liability. The Twenty-Five Million Dollar (\$25,000,000) aggregate maximum dollar amount of liability stated in this Paragraph 19 shall not apply to claims resulting from or arising out of the following:
  - (i) bodily injury or death
  - (ii) damage to real or personal property; or
  - (iii) violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement (the Intellectual Property Rights); except, however, there shall be no liability for violation or infringement of Intellectual Property Rights with respect to the three (3) conditions stated in subparagraphs 19(b)(ii)(1), (2) or (3), below. Damages for claims stated in subparagraphs 19 (a)(i), (ii) or (iii), above, shall be without any limitation of liability.
- (b) Claims Subject to No Liability. The liability of the Provider, its employees, agents, or subcontractors, for claims described in Paragraph 18 shall not apply to the following:
  - (i) lost profits or savings; or
  - (ii) violation or infringement of Intellectual Property Rights solely with respect to any of the three (3) conditions stated below, and a final judgment is obtained by a third party for such violation or infringement of Intellectual Property Rights:
    - (1) The State's material modification of a software or hardware product deliverable of the Provider, or the State's use of a program deliverable of the Provider in an operating environment materially different from that specified.
    - (2) The combination, operation or use by the State of a software or hardware product or program deliverable of the Provider with any software or hardware product or program that is not a deliverable (a) of the Provider, (b) of any contractor or vendor coordinating or partnering on the project, or (c) otherwise identified in the RFP or associated contract documents.
    - (3) Infringement by a non-Provider deliverable software or hardware product or program operated or used by the State in a stand-alone environment (and that is not operated or used by the State in combination with other software or hardware

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product or program deliverables as described in subparagraph 19(b)(ii)(2), above); unless, however, the software or hardware product or program is identified in the RFP or any of the associated contract documents as an optional or required product or program.

20. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

21. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

22. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a “risk retention group” insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

23. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

24. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

25. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

26. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

27. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency,

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including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

28. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

**RIDER C**

**EXCEPTIONS TO STANDARD RIDER B**

No exceptions to Rider B are granted under this Agreement.

**RIDER D**

**ADDITIONAL PROVISIONS**

The following additional provisions supplementing Rider B, Methods of Payment and Other Provisions apply to all agreements with the Department of Human Services.

1. **AUDIT** Funds provided under this Agreement are subject to the audit requirements contained in the Maine Uniform Accounting and Auditing Practices for Community agencies (MAAP), and may further be subject to audit by authorized representatives of the Federal Government.

2. **REPORTING SUSPECTED ABUSE/NEGLECT** The Provider agrees that when any staff in its employ under this Agreement has reasonable cause to suspect that a child or an adult has been or is likely to be abused or neglected, the Provider shall cause a report to be made to the Department of Human Services pursuant to 22 MRSA §§ 3477 and 4011.

3. **CONFIDENTIALITY** In conformance with Federal and State statutes and regulations, the Provider and the Department shall guarantee the protection of information of a confidential nature regarding all persons served under the terms of this Agreement, including the proper care, custody, use and preservation of records, papers, files, communications of the agency and any such other items that may reveal confidential information about persons served through this Agreement.

4. **LOBBYING** No Federal or State appropriated funds shall be expended by the Provider for influencing or attempting to influence an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this provision, the Provider shall complete and submit a “Disclosure of Lobbying Activities” form.

5. **DRUG-FREE WORKPLACE** The Provider certifies that it shall provide a drug-free workplace by: publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violation of such prohibition; establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the grantee’s policy of maintaining a drug-free workplace, available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, providing a copy of the drug-free workplace statement to each employee to be engaged in the performance of this Agreement; notifying the employees that as a condition of employment under the Agreement the employee will: abide by the terms of the statement; and notify the employer of any criminal drug conviction for a violation occurring in the workplace no later than five days after such conviction.

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The Provider shall notify the state agency within ten days after receiving notice of criminal drug convictions occurring in the workplace from an employee or otherwise receiving actual notice of such conviction; and will take one of the following actions, within 30 days of receiving such notice with respect to any employee who is so convicted: take appropriate personnel action against such an employee, up to and including termination; or requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

6. **DEBARMENT AND SUSPENSION** In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it and all persons associated with the Agreement, including persons or corporations who have critical influence on or control over the Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency.

The Provider further agrees that the Debarment and Suspension Provision shall be included, without modification, in all sub-agreements.

7. **ENVIRONMENTAL TOBACCO SMOKE** By signing this Agreement, the Provider certifies that it shall comply with the Pro-Children Act of 1994, P.L. 103-227, Part C which requires that smoking not be permitted in any portion of any indoor facility owned, leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Provider further agrees that it shall require the language of this certification be included in any sub-agreement.

8. **MEDICARE AND MEDICAID ANTI-KICKBACK** By signing this Agreement, the Provider agrees that it shall comply with the strictures of 42 U.S.C. 1320a-7b(b) which prohibits the solicitation or receipt of any direct or indirect remuneration in return for referring or arranging for the referral of an individual to a provider of goods or services which may be paid for with Medicare, Medicaid, or State health program funds.

9. **PUBLICATIONS** When issuing reports, brochures, or other documents describing programs funded in whole or in part with funds provided through this Agreement, the Provider agrees to clearly acknowledge the participation of the Department of Human Services in the program. In addition, when issuing press releases and requests for proposals the Provider shall clearly state the percentage of the total cost of the project or program to be financed with Agreement funds, and the dollar amount of Agreement funds for the project or program.

10. **MOTOR VEHICLE CHECK** The Provider shall complete a Bureau of Motor Vehicles check on all agency staff and volunteers who transport or may transport clients. This check must be completed prior to allowing the staff person or volunteer to transport clients, and at least every two years thereafter. If a staff member or volunteer's Motor Vehicles record contains any Operating Under the Influence or other violations that indicate an unsafe driving history, he/she may not transport clients. The Provider shall implement agency/program policy to assure compliance with this requirement.

11. **OWNERSHIP** All notebooks, plans, working papers or other work produced in the performance of this Agreement are the property of the Department and upon request shall be turned over to the Department.
12. **SOFTWARE OWNERSHIP** Upon request, the State and all appropriate federal agencies shall receive a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to do so, all application software produced in the performance of this Agreement, including, but not limited to, all source, object and executable code, data files, and job control language or other system instructions.
13. **YEAR 2000 COMPLIANT/READY** The Provider warrants that equipment and software products related to the performance of this Agreement are “Year 2000 Compliant/Ready”, in that they are capable of correctly identifying, manipulating, and performing calculations on dates within and between the 20th and 21st centuries. These products have been validated to be free from conditions that would prevent normal operation after the calendar changes to January 1, 2000.


**RIDER E**  
**FURTHER REQUIREMENTS**

The following additional requirements supplement Rider B, Methods of Payments and Other Provisions:

1. **ADDITIONAL GENERAL REQUIREMENTS**

1.1 **Definitions**

The following terms used in this Contract shall be defined as follows, unless the context clearly indicates otherwise:

<b>Provider</b>	 , and any of its subsidiaries, affiliated entities, or successors
<b>Deliverable</b>	The work products produced by the Provider for submission to the Department for its review and approval in accordance with the provisions of this Agreement
<b>Department</b>	Maine Department of Human Services
<b>DHS</b>	Maine Department of Human Services
<b>DHS - DoTS</b>	Maine Department of Human Services -- Division of Technology Services
<b>Effective Date</b>	The effective date of this Contract is the date the Contract is fully executed by the State and the Contractor, subsequent to the Contract's approval by the State's Purchases Review Committee
<b>Event</b>	Any written or oral communication, direction, instruction, interpretation or determination by or from the Department's Contract Administrator or duly designated and authorized representative thereof
<b>Riders</b>	Written materials that are attached to this Contract and/or incorporated by reference



**1.2 Deviation From The RFP**

The requirements appearing in the RFP are a part of the terms and conditions of this Contract. In no event shall anything contained in the Proposal be deemed to supersede or contravene those terms and conditions.

**1.3 Modification**

No modification or change of any provision in this Contract shall be made, or be construed to have been made, unless such modification is mutually agreed to in writing by the Provider and the Department. The contract modification will be incorporated as a written amendment to the Contract. Memoranda of understanding and correspondence shall not be construed as amendments to this Contract.

**1.4 Updated Detailed Project Plan**

Within thirty (30) days of execution of this contract, the Department and the Provider shall prepare an Updated Detailed Project Plan which shall detail due dates and a payment schedule for each of the contract deliverables listed in Rider B. The Updated Project Plan shall be incorporated into this Contract and made a part thereof. All deliverables approved by the Department shall be considered part of this contract.

**1.5 Contract Price**

This is a fixed price contract for Katie Beckett Assessment Operations, as detailed in the RFP, and the bidder's Proposal. The Provider will implement the Katie Beckett Plan, in accordance with the terms and conditions of this contract, for the amount of \$ [REDACTED], which shall be payable pursuant to the payment schedule agreed upon as part of the Updated Detailed Project Plan.

**1.6 Project Manager**

The Contract Administrator may designate in writing a person or persons with delegated authority to act on the Contract Administrator's behalf (the "Project Manager"), and the Provider may rely upon such designation until given notice of its revocation; provided, however, that in no event shall any such designation be effective to allow the Project Manager, without the approval of the Contract Administrator, to (i) authorize the payment of invoices; (ii) consent to any amendment or modification of the Contract; or (iii) terminate this contract.

**1.7 Interpretation**

**1.7.1 Reliance on Policy Determinations**

The Department shall determine all program policy. The Provider may from time to time request the Department to make policy determinations or to issue operating guidelines required for proper performance of this Contract, and the Department's Project Manager shall respond in writing in a timely manner. The Provider shall be entitled to rely upon and act in accordance with such written policy determinations and operating guidelines, unless subsequently amended, modified or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Contract, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and federal laws, regulations, policies, procedures and guidelines, to be in complete compliance and conformity therewith.

**1.7.2 Titles Not Controlling**

Titles of paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of language.

**1.7.3 Gender and Number**

The use of the masculine, feminine, or neuter gender, or of the singular or plural number, from time to time herein shall not be so construed as to require a particular implication therefrom, and any such gender or number may be implied as the context may require.

**1.7.4 No Rule of Construction**

The parties acknowledge that this Contract was initially prepared by the Department solely as a convenience and that all parties hereto, and their counsel, have read and fully negotiated all the language used in the Contract. The parties acknowledge that, because all parties and their counsel participated in negotiating and drafting this Contract, no rule of construction shall apply to this Contract that construes ambiguous or unclear language in favor of or against any party because such party drafted this Contract.

**1.8 Advertising Award**

The Contract shall not refer to awards in commercial advertising in such a manner as to state or imply that the Provider or its services are endorsed or preferred by the State of Maine. News releases pertaining to this project will not be made without prior written approval from the State of Maine.

**2. TYPE OF CONTRACT**

This Contract is a contract for the [Katie Beckett Assessment Operations](#), on the basis of a firm fixed price.

**2.1 Term of the Contract**

The term of this Contract shall begin on the first day after this Contract has been fully executed by the parties, and shall expire on [REDACTED], or at the completion of all specified tasks and delivery of all contracted products, goods, and services as defined in this Contract, including performance of any warranty and/or maintenance agreements, whichever is the later date, unless earlier terminated pursuant to the terms of this Contract. The contract may be renewed on an annual basis at the end of the warranty period up to four (4) times at the discretion of the State of Maine.

**3. ADDITIONAL TERMINATION REQUIREMENTS**

The performance of work under the Contract may be terminated by the Department in whole, or in part, whenever for any reason the Contract Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Contract is terminated and the date on which such termination becomes effective. In the event of any such termination, the Provider shall be entitled to receive just and equitable compensation for all accepted deliverables and satisfactory authorized work performed as of the termination date, subject to the terms of this Section 3 of this Rider E. In no event, however, shall the Provider be paid for loss of anticipated profit.

Upon delivery to the Provider of a Notice of Termination, specifying the nature of the termination, the extent to which performance of work under this Contract is terminated, and the date upon which such termination becomes effective, the Provider shall:

- (i) stop work under this Contract on the date and to the extent specified in the Notice of Termination;
- (ii) take such action as may be necessary, or as the Department's Contract Administrator may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Provider and in which the Department has or may acquire an interest;
- (iii) terminate all orders to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) subject to the provisions of Section 3.2, assign to the Department in the manner and to the extent directed by the Department's Contract Administrator all of the rights, title, and interest of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to

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- settle or pay any or all claims arising out of the termination of such orders, however, notwithstanding this provision, the Provider will not be obligated to assign any such rights, title or interest in the absence of payment therefor by the Department;
- (v) with the approval or ratification of the Department's Contract Administrator, settle all outstanding liabilities and all claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Contract;
  - (vi) subject to the provisions of Section 3.2, transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Department's Contract Administrator all files, processing systems, data manuals, or other documentation, in any form, that relate to all the work completed or in progress prior to the Notice of Termination; and
  - (vii) complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.

The Provider shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item of reimbursable price under this clause.

The Department may withhold payment of any amount in excess of fair compensation for the work actually completed by the Provider prior to termination of this Contract and will be entitled to pursue all of its other available legal remedies against the Provider. Notwithstanding the above, the Provider shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Contract by the Provider.

Neither party shall be liable for any incidental or consequential damages arising or resulting from any breach of this Contract; provided, however, that the foregoing shall not be deemed to limit in any way the provisions of Section 8 of Rider B.

The imposition of liquidated damages shall not limit the Department's rights to pursue any other remedies available to it, including but not limited to the right to seek damages pursuant to this Section, provided, however, that the Department may not recover liquidated damages and actual damages for the same breach.

The Department may, by written notice of default to the Provider, provide that the Provider may cure a failure or breach of this Contract within a period of thirty (30) days (or such longer period as the Department's Contract Administrator may authorize in writing), said period to commence upon receipt of the notice of default specifying such failure or breach. The Department's exercise of this provision allowing the Provider time to cure a failure or breach of this Contract does not constitute a waiver of the Department's right to terminate this Contract, without providing a cure period, for any other failure or breach of this Contract.

In any event, this Contract shall terminate at the time specified in Section 2.1 of this Rider E.

**3.1 Assurances Before Breach**

If documentation or any other deliverables due under this Contract are not to the satisfaction of the Contract Administrator, the Provider will deliver additional Provider resources to the project in order to complete the deliverable to the satisfaction of the Department and to demonstrate that other project schedules will not be affected. Upon written notice by the Department's Contract Administrator of the Department's concerns regarding the quality or timeliness of an upcoming deliverable, the Provider shall, within five (5) business days of receipt of said notice, submit a corrective action plan documenting the Provider's approach to completing the deliverable to the satisfaction of the Department's Contract Administrator without affecting other project schedules. At his or her sole discretion, the Department's Contract Administrator, within five (5) business days of receipt of the corrective action plan, shall either approve the plan, reject the plan, or return the plan to the Provider with specific instructions as to how the plan can be modified to merit approval

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and a specific time period in which the revised plan must be resubmitted. Said determination, approving, rejecting or returning the plan, shall not be subject to the dispute resolution mechanism set forth in Section 7 of this Rider E.

**3.2 Department Options At Termination**

In the event the Department terminates this Contract pursuant to section 3, *Additional Termination Requirements*, the Department may at its option:

- (i) retain all or a portion of such hardware, equipment, software, and documentation as has been provided, obtaining clear title to the same, and procure upon such terms and in such manner as the Department's Contract Administrator may deem appropriate, hardware, equipment, software, documentation, or services as are necessary to complete the project; or
- (ii) to the extent that the termination is predicated upon material breach of the Provider, return, as is, all or a portion of hardware, equipment, software, and documentation to Provider at Provider's expense in which instance the Provider must remit all moneys previously paid by the Department within five (5) business days of receipt of such hardware, equipment, software, and documentation.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

**4. FAILURE TO PERFORM**

In the event the Provider has failed to perform any substantial obligation under this agreement, or has otherwise committed a breach of this Contract, the Department may withhold all moneys due and payable to the Provider, without penalty, until such failure is cured or otherwise adjudicated.

**5. PROVIDER PERSONNEL**

The parties recognize that the primary value of the Provider to the Department derives directly from the Key Personnel assigned to the project. Key Personnel are deemed to be those individuals whose resumes were offered by the Provider in his Proposal. Therefore, the parties agree that Key Personnel shall be assigned to the Katie Beckett Operations in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without prior written consent of the Department. Replacement of such personnel, if approved, shall be with personnel of equal or greater ability and qualifications.

The Department shall retain the right to reject any of the Provider's employees whose qualifications, in the Department's judgment, do not meet the standards established by the Department as necessary for the performance of the services. In considering the Provider's employees' qualifications, the Department will act reasonably and in good faith.

The Provider may not propose individuals for this project that are employees of a State agency. Federal regulations prohibit the federal government from paying twice for any employee. For example, a person who is an employee of one state could not be employed to work on a project in a second state and be paid in any way by that state (including paid leave status) as long as any part of his state compensation is reimbursed by the federal government.

During the course of this Contract, the Department reserves the right to require the Provider to reassign or otherwise remove from the project any Provider or subcontractor employees found unacceptable by the Department. In considering the Provider's and subcontractors' employees' acceptability, the Department shall act reasonably and in good faith.

6. **DISPUTES**

In the event of any dispute arising during the term of this Contract concerning performance of this Contract, either party will serve written notice of such dispute on the other party, and the dispute shall initially be decided by the Department's Contract Administrator who shall, within five (5) business days, reduce such decision to writing and serve a copy on the Provider. Should the Provider be dissatisfied with this decision, the Provider may, within five (5) business days of receipt of the decision, submit the dispute to the BMS Director for final resolution.

7. **CONFIDENTIALITY OF INFORMATION**

All materials and information provided to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether verbal, written, magnetic media, cards, or any other format shall be regarded as confidential information in accordance with the provisions of State and Federal law and ethical standards, and all necessary steps shall be taken by the Provider to safeguard the confidentiality of such material or information in conformance with State and Federal law and ethical standards.

8. **PRIME CONTRACTOR RESPONSIBILITIES**

The Provider is solely responsible for fulfillment of this Contract with the Department. The Provider assumes responsibility for all services offered and products to be delivered whether or not the Provider is the manufacturer or producer of said services.

The Provider shall be wholly responsible for performance of the entire contract whether or not subcontractors are used. Any subcontract into which the Provider enters with respect to performance under this Contract shall not relieve the Provider in any way of responsibility for performance of its duties. Further, the Department will consider the Provider to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from this Contract. The Department shall bear no liability for paying the claims of any subcontractors, whether or not those claims are valid.

The Provider shall give the Department immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any subcontractor or vendor which may result in litigation related in any way to this Contract or which may affect the performance of duties under this Contract. The requirement of prior approval of any subcontract under this Contract shall not make the Department a party to any subcontract or create any right, claim or interest in the subcontractor or proposed subcontractor against the Department. The Contractor agrees to defend (subject to the approval of the Attorney General) and indemnify and hold harmless the Department against any claim, loss, damage, or liability against the Department based upon the prior approval requirements of this Section 9, *Prime Contractor Responsibilities*. No subcontract or delegation shall relieve or discharge the Provider from any obligations or liability under this Contract.

9. **WAIVER**

This contract may be modified only by written amendment executed by all parties hereto, and approved by the appropriate State officials and federal agencies. Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach.

10. **ADDITIONAL INSURANCE REQUIREMENTS**

10.1 **Minimum Insurance**

The Provider shall obtain, pay for, and keep in force the following minimum insurance and shall furnish a certificate or certificates evidencing that such insurance is in effect:

- (i) disability, workman's compensation, and unemployment compensation in accordance with the statutory requirements of the state where the work is performed;

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- (ii) general liability insurance (including automobile and broad form contractual coverage) against bodily injury or death of any person in the amount of one million dollars (\$1,000,000) for any one occurrence; and
- (iii) insurance against liability for property damages as well as first-party fire insurance, including contents coverage for all records maintained pursuant to this Contract, in the amount of one million dollars (\$1,000,000).

**10.2 Certificates**

The Provider shall furnish to the Department a certificate(s) evidencing that required insurance is in effect, for the policy amounts, and applicable policy numbers and expiration dates, in accordance with Rider B. In the event of cancellation of any insurance coverage, the Provider shall immediately notify the Department of such cancellation. The Provider will be required to obtain suitable replacement coverage within fourteen (14) days of the cancellation. The Department, at its option, may impose a stop work order on the Provider until such replacement coverage is secured and approved by the Department. If a stop work order is imposed, the Department shall not be liable for any costs or lost profits incurred by the Provider.

**10.3 Notice Of Change**

The Provider shall provide the Department with written notice at least ten (10) business days prior to any change in the insurance coverage obtained to comply with this section.

**10.4 Liability Not Limited**

The provisions of this Section 13 shall not be deemed to limit the liability or responsibility of the Provider or any of its subcontractors hereunder.

**10.5 Insurance Of Assumed Risk**

The Provider may insure any portion of the risk assumed under the provisions of this Contract based upon the Provider's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by the Department, or imposition of penalties by the Department. Express prior written approval of the Agreement Administrator is required for any proposed program of self-insurance.

**11. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under this Contract shall be performed by the Department's Contract Administrator and other officials that the State of Maine may so designate.

The State of Maine or its authorized representatives shall at all reasonable times have the right to enter the premises or such other places where duties under this Contract are being performed, to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be performed in such a manner that will not unreasonably delay work.

**12. CONFLICT OF INTEREST**

No official or employee of the State and no other public official of the State of Maine or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in this Contract.

The Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Provider further covenants that in the performance of this Contract, no person having any such known interests shall be employed.

**13. STATE PROPERTY**

The Provider shall be responsible for the proper custody and care of any State owned property furnished for Provider's use in connection with the performance of this Contract, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

**14. FEDERAL INSPECTIONS**

During and after this project, the Federal funding agency or their authorized representatives shall be allowed access to inspect all Provider materials, documents, work papers, deliverables, or any such other items which pertain to this project. The Provider shall cooperate with any federal reviews and shall supply copies of any requested materials. This requirement also applies to any subcontractor(s) who may be engaged in the project. Any subcontract permitted by the Department must contain a provision which sets forth the subcontractor's agreement with the terms set forth in this paragraph.

**15. COPIES OF REPORTS**

Upon completion of the project, the Provider shall convey to the Department copies of all interim reports, cost records, data collection forms, and any other working papers that support final approval. These items shall also be made available, upon request, to other authorized officials from the federal government.

**16. COPYRIGHT OF DATA**

The Provider may not publish or copyright any data without prior approval, unless otherwise stated herein; provided, however, that the Provider may publish source and object code without obtaining such prior approval. The State and the federal government shall have the right to publish, duplicate, use and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

"Data" shall mean all results, technical information and materials developed and/or obtained in the performance of the services hereunder, including but not limited to, all reports, surveys, plans, charts, recordings (video and/or sound), pictures, drawings, analyses, source and object code, graphic representations, computer programs and printouts, notes and memoranda, and documents whether finished or unfinished, which result from or are prepared in connection with the services performed hereunder.

**17. PATENT, COPYRIGHT AND OTHER PROPRIETARY INDEMNIFICATION**

The Provider warrants that all services, equipment, software, supplies, and any other products provided hereunder do not and will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider shall cooperate in the defense and provide a defense to the Department of such claim at the Provider's expense and shall indemnify the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney's fees.

**18. ACCOUNTING REQUIREMENTS**

The Provider shall establish and maintain an accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The accounting system shall maintain records pertaining to the tasks defined in this Contract and all other costs and expenditures made under this Contract.

Specific accounting records and procedures are subject to State and federal approval. Accounting procedures, policies, and records shall be completely open to state and federal audit at any time during the contract period and for five years thereafter.

**19. AUDIT REQUIREMENTS**

The Provider shall maintain books, records, documents, and other evidence pertaining to the administrative costs and expenses of this Contract to the extent and in such detail as shall properly reflect all revenues, all net

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costs, direct and apportioned, and other costs and expenses of whatever nature as relating to performance of contractual duties under the provisions of this Contract. The Provider's accounting procedures and practices shall conform to Generally Accepted Accounting Principles (GAAP) and the costs properly applicable to this Contract shall be readily ascertainable therefrom.

For work to be performed on an hourly reimbursement rate or cost reimbursement basis, the allow ability of direct and indirect costs shall be governed by 41 C.F.R., Subpart 1-15.2.

**20. RECORDS RETENTION REQUIREMENTS**

The Provider hereby agrees to the conditions of 45 C.F.R., Part 74.24 (a), (b), and (d) regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Contract. In addition, the Provider shall agree to the following terms regarding retention of contract records and access for government officials.

Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all other pertinent books, documents, papers, and records of the Provider involving transactions related to this Contract for a period of five years from the date of expiration or termination of this Contract.

Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within five years.

The Provider hereby agrees that authorized federal and State representatives shall have access to and the right to examine the items listed above during the contract period and during the five year post-contract period or until resolution. During the contract period, the access to these items will be provided at the Provider's office at all reasonable times. During the five year post-contract period, delivery of and access to the listed items will be at no cost to the Department.

The provision of this section shall be incorporated in any subcontract of \$10,000 or more.

**21. AUDIT LIABILITIES**

The Provider shall be liable for any State or Federal audit exceptions that are the fault of the Provider or that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable as defined in this Article, the Provider shall have thirty (30) days to remedy the exception. If the Provider fails to remedy the exception within this time period, the Provider shall immediately return to the Department all payments made under this Contract which have been disallowed in the audit exception.

**22. TAXES**

The Department is not required to pay taxes of any nature; however, if Provider is required to pay sales, use, value-added, or other federal, state, or local taxes based on the licenses or services provided in this Contract, except taxes based on Provider's income or property tax for software, then such taxes shall be billed to and paid by the Department upon evidence of payment by Provider.

**23. PRICE PROTECTION**

The Provider shall ensure that all prices, terms, and warranties included in this Contract are comparable to or better than the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Contract, the Provider enters into agreements which provide more favorable terms to any other comparable customer(s), the Provider shall provide the same terms to the Department.



**24. LOBBYING CERTIFICATION**

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certify that no Federal funds will be used to lobby or influence a federal officer or member of Congress. The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

**25. PRICING AND DISCOUNT**

The Provider warrants that any element of recurring or nonrecurring cost in excess of the Contract Price designated in Section 1.6 of this Rider E which must be borne by the Department has been identified by Provider in their Proposal.

Federal funding is being used for acquisition of products and/or services, under this Contract. Consequently, interest cannot be paid under any installment purchase or lease/purchase agreement entered into as a part of this Contract.

Provider agrees to convey to the Department good title to purchased items free and clear of all liens, pledges, mortgages, encumbrances or other security interest.

**26. COVER**

If, in the reasonable judgment of the Department, a default by the Provider is not so substantial as to require termination, reasonable efforts to induce the Provider to cure the default are unavailing, and the default is capable of being cured by the Department or by another contractor without unduly interfering with continued performance by the Provider, the Department may provide or procure the services reasonably necessary to cure the default, in which event the Provider shall reimburse the Department for the reasonable cost of those services.

**27. EXTENSIONS**

In the event Provider is delayed by any act or omission of the Department (including, without limitation, the Department's failure to deliver any material to be provided by the Department when and as required, or to perform any of its covenants or obligations hereunder, or the failures of any third parties hired by the Department, then for each day of extension caused by such delay, Provider shall be entitled to a one-day extension of the time for Provider's performance. A listing of specific Department deliverables, responsibilities and due dates will be agreed upon from time to time by the Department and Provider.

**28. TRAINING**

The bidder shall provide, in accordance with the requirements specified in the Contract.

**29. REPORTING REQUIREMENTS**

At a minimum, the Provider shall submit the QA and standard written reports as specified in the RFP and Rider A.

All reports shall be submitted through the Department's Contract Administer.

30. **ADA**

The Provider certifies that all information technology products and software used and/or developed as part of this Contract must comply with the “State of Maine’s Computer Accessibility Standard” adopted by the Information Services Policy Board 1/13/98.

31. **CIVIL RIGHTS ACT AND REHABILITATION ACT ASSURANCES**

In addition, compliance with the Title VI of Civil Rights Act of 1964 (42 USC § 2000d *et seq.*); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); and the United States Administration for Children and Families Regulations found in 45 CFR, parts 80 and 84 is required of the bidder.

32. **ATTORNEY FEES AND COST LITIGATION**

In the event of any litigation, appeal, or other legal action to enforce any provision of the Contract, the Vendor agrees to pay all expenses of such action, including attorney’s fees and costs at all stages of litigation, if the Department is the prevailing party.